



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 30, 2012

Ms. Tiffany N. Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001

OR2012-08291

Dear Ms. Evans:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 454966 (GC No. 19463).

Houston Airport Systems ("HAS") received a request for all bid responses and tabulations submitted and used for the a specified project. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Although you take no position as to whether the remaining submitted information is excepted under the Act, you state release of the remaining submitted information may implicate the proprietary interests of Boyer, Inc.; R+B Group, Inc.; and Peltier Brothers Construction, Ltd. (collectively, the "third parties"). Accordingly, you state HAS notified these third parties of the requests for information and of their rights to submit arguments to this office as to why their submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received comments from any of the third parties. Thus,

we find the third parties have not demonstrated that they have a protected proprietary interest in any of their submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, HAS may not withhold any of the third parties' information on the basis of any proprietary interests they may have in their information.

Section 552.104 of the Government Code exempts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not exempt bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the bid tabulations submitted in Exhibit 2 relate to an open bidding process for which a contract has not yet been awarded. You further state the release of the information at issue would give a competitive advantage to bidders because, in the event that a contract is not awarded to one of the current bidders, subsequent bidders would be less willing to negotiate in a manner favorable to HAS. You also state this would present a clear threat of harm to HAS's ability to obtain the lowest price and most favorable terms possible. Based on your representations and our review, we conclude HAS has demonstrated how release of the submitted information in Exhibit 2 would harm its interests in a competitive situation. Accordingly, HAS may withhold Exhibit 2 under section 552.104 of the Government Code until a contract is executed. As no further exceptions to disclosure are raised, HAS must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/akg

Ref: ID# 454966

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Mark L. Boyer  
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(w/o enclosures)

Mr. Damon Gilleland  
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Mr. Richard Peltier  
Peltier Brothers Construction, Ltd.  
11603 Windfern  
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